

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-CR-68-1H
No. 5:12-CV-145

FILED IN OPEN COURT
ON 09/11/12
Julie A. Richards, Clerk
US District Court
Eastern District of NC

ANTARRIOS JAMEEN CLARK,)
Petitioner,)
v.) ORDER
UNITED STATES OF AMERICA,)
Respondent.)

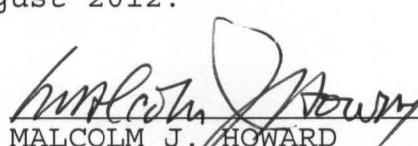
This matter is before the court on petitioner's motion to vacate his conviction based upon the Fourth Circuit's decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). On August 2, 2012, the government filed a motion to dismiss petitioner's motion. The government has since withdrawn its motion to dismiss by notice filed August 16, 2012. The government states that it is deliberately waiving the statute of limitations and the court should, therefore, reach the merits of petitioner's claim.

On March 4, 2009, petitioner was charged in a single-count indictment with possession of a firearm by a convicted felon, 18 U.S.C. §§ 922(g)(1) and 924 [DE #1]. On June 10, 2009, relying on then-existing precedent, petitioner pled guilty to the indictment pursuant to a written plea agreement [DE #19]. On

September 8, 2009, this court sentenced petitioner to 72 months in prison. [DE #22].

The court, having reviewed the record, agrees that petitioner's motion is meritorious. Under Simmons' definition of a felony offense, petitioner's prior North Carolina convictions are not felonies for the purposes of § 922(g)(1) because petitioner could not have been imprisoned for more than one year on any of these offenses. As petitioner's exposure for his prior convictions did not exceed one year, petitioner is factually innocent of the federal crime of being a felon in possession of a firearm in violation of § 922(g)(1). Therefore, petitioner's motion to vacate [DE #27] is granted, and this court's judgment entered September 8, 2009, is hereby vacated. The court ORDERS that petitioner be discharged forthwith from the custody of the Federal Bureau of Prisons.

This 11th day of September 2012.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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